

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**VIASAT, INC.,**

**Plaintiff,**

**vs.**

**KIOXIA CORPORATION and KIOXIA  
AMERICA, INC.,**

**Defendants.**

**Case No.: 6:21-cv-01231-ADA**

**JURY TRIAL DEMANDED**

**PLAINTIFF VIASAT, INC.'S RESPONSE TO  
DEFENDANTS' MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)**

Viasat has responded to the issues raised in Kioxia's motion to dismiss by amending its complaint. *See* D.I. 33. Accordingly, Kioxia's motion to dismiss the original complaint should be denied as moot. *See, e.g.,* Text Order, *Valjakka v. Cisco Sys., Inc.*, No. 6:21-cv-00944-ADA (W.D. Tex. Apr. 5, 2022); Text Order, *Future Link Sys., LLC v. Realtek Semiconductor Corp.*, No. 6-21-cv-00363-ADA (W.D. Tex. Mar. 28, 2022); Text Order, *NCS Multistage Inc. v. TCO AS*, No. 6-20-cv-00622-ADA (W.D. Tex. June 2, 2021); Text Order, *Kerr Mach. Co. v. Vulcan Indus. Holdings, LLC*, No. 6-20-cv-00200-ADA (W.D. Tex. Mar. 29, 2021); Text Order, *Jiaxing Super Lighting Elec. Appliance Co. v. CH Lighting Tech. Co.*, No. 6-20-cv-00018-ADA (W.D. Tex. July 26, 2020); Text Order, *SaveItSafe, LLC v. Oracle Corp.*, No. 6-20-cv-00286-ADA (W.D. Tex. July 24, 2020); *see also* *Casey v. Marathon Petrol. Co.*, No. SA-19-cv-00732-OLG, 2019 WL 11527904, at \*1-2 (W.D. Tex. Aug. 6, 2019) (denying motion to dismiss as moot because "the Amended Complaint appears to at least in part be intended to respond to [Defendant]'s position in its Motion to Dismiss"); *Aetna Inc. v. People's Choice Hosp., LLC*, No. SA-18-cv-00323-OLG, 2018 WL 6220169, at \*3 (W.D. Tex. June 18, 2018) (same).

Viasat's amended complaint addresses the alleged deficiencies that Kioxia identified in its motion. For example, Kioxia urges the Court to dismiss the original complaint because, according to Kioxia, the allegations of direct infringement are insufficiently pled. *See* D.I. 29 at 5. Kioxia likewise argues that the original complaint failed to provide factual allegations relevant to indirect infringement. *Id.* at 1 n.1. While Viasat disagrees with Kioxia's characterization of the original complaint, the amended complaint includes further factual allegations relating to direct and indirect infringement. *See* D.I. 33 at ¶¶ 56-67.

For the above reasons, Viasat respectfully submits that Kioxia's motion to dismiss the original complaint should be denied as moot.

Dated: April 22, 2022

Respectfully submitted,

/s/ Melissa R. Smith

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**CERTIFICATE OF SERVICE**

I certify that, on April 22, 2022, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF System, which will then send a notification of such filing (NEF) to all counsel of record.

/s/ *Melissa R. Smith*

Melissa R. Smith